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E.O. 12958: N/A
TAGS: PHUM UNCHR
SUBJECT: RESPONSE TO THE WORKING GROUP OF COMMUNICATION
REGARDING G/SO 215/1 USA 76 (NIEBLA) - GENEVA LOG 71

¶1. Mission is requested to convey to the Working Group on Communications the text of the letter in paragraph 3. This is in response to their communication G/SO 215/1 USA 76. This is item number 71 on the 2009 Geneva Correspondence Log. The response will also be e-mailed to the Mission.

¶2. In their letter dated September 17, 2009, the Working Group on Communications forwarded a request for additional information on the case of Mr. Jorge L. Niebla, currently incarcerated at the Apalachee Correctional Institution in Florida. Based on the Department's response of 30 March 2009, the Working Group has asked for additional information provided in paragraph 3.

¶3. Begin text.

The Government of the United States avails itself of the opportunity to respond to the request of the Office of the High Commissioner for Human Rights from September 17, 2009, for further information regarding the previous communication G/SO 215/1 USA 76. For the reasons set forth previously and reiterated below, the United States considers this communication inadmissible and requests that it be dismissed by the Working Group. However, the United States also responds to the specific issue identified in the request from September 17, 2009.

¶I. Summary of the Allegations Contained in the Communication

In a two-page communication to the Office of the United Nations High Commissioner for Human Rights, Mr. Jorge L. Niebla (hereinafter Petitioner) of Sneads, Florida alleges the following:

- (1) prisonstaff brutality, including a) humiliation and harassment; b) deprivation of food; c) inhumane and degrading treatment; and d) cruel and unusual punishment; and
- (2) an unfair justice system, characterized by denial of equal protection of the laws.

While Petitioner alleges knowledge of the above, he never alleges that he was subject to any of the mistreatment referenced in the complaint.

II. Admissibility under the Human Rights Council Complaint Procedure

A communication is admissible under the Human Rights Council Complaint Procedure provided it meets the criteria set forth in Section IV.B of HRC resolution 5/1. First, to be admissible, the communication must provide a specific and detailed &factual description of the alleged violations, including the rights which are alleged to be violated8 (Res. 5/1 at para. 87(b)) and the alleged violations must be &reliably attested8 and have &clear evidence8 (Res. 5/1 at para. 85). Second, the complainant must exhaust all

domestic remedies (HRC resolution 5/1, para. 87(g)). Third, the communication must allege a &consistent patterns⁸ of gross and reliably attested violations of human rights (Res. 5/1 at para. 87(f)). Mr. Niebla,s communication fails to meet the first two of these requirements.

1A. The communication should be dismissed because it lacks sufficient factual descriptions of alleged violations and fails to reliably attest to those alleged violations or provide any clear evidence.

An important requirement for admissibility is that the communication &give() a factual description of the alleged violations, including the rights which are alleged to be violated⁸ (HRC resolution 5/1, para. 87(b)). Also, such alleged violations must be &reliably attested⁸ and be backed by &credible evidence⁸ (Res. 5/1 at para 85.) This communication fails to meet all of these requirements. The communication,s allegations are poorly supported by factual descriptions. For instance, although Petitioner,s allegations discuss the treatment of other inmates in Apalachee Correctional Institution, he never names an other inmate. The only arguably factual allegation in the communication is that &during breakfast, lunch, and dinner time if an inmate talks in line, staff will not allow the inmate to eat.⁸ But, all of the allegations are deficient in multiple respects: no specific staff or inmates are referenced; no specificity or corroboration is provided; no affidavits are submitted; and no statements of witnesses are submitted. Petitioner further never alleges that he was subject to any of the mistreatment referenced in the complaint.

Allegations made to further the theory that prison staff have engaged in unlawful behavior not only lack sufficient factual support and credible evidence, but are by no means reliably attested. The communication notes that &Mr. Palmer and Mr. Whitehurst are so involved in wrongdoing that they refused to recognize inmates as persons before the law.⁸ Although Petitioner claims that Director Whitehurst &has refused to remedy the problem because he don,t respect nor honor the U.S. Constitution, nor the Universal Declaration of Human Rights,⁸ no facts or evidence are provided to support these allegations.

Accordingly, the communication should be found inadmissible for failure to provide any factual description of an alleged violation of human rights, any credible evidence, and any reliable attestation.

1B. The communication fails to even mention the domestic remedies afforded the Petitioner, or in the alternative, why those remedies would be ineffective or unreasonably prolonged.

The doctrine of exhaustion of local remedies ensures that the State, where a human rights violation has allegedly occurred, has the opportunity to provide redress within the framework of its domestic legal system. The U.S. legal system provides strong protections against the abuses that are alleged in the complaint. It also provides a comprehensive system of remedies that serve to prevent human rights abuses and provide relief to their victims. The available remedies can result in criminal punishment against the individuals responsible for the violations, injunctive relief aimed at improving an entire institution or system, and/or monetary damages or reparations to the victims.

Florida Administrative Code Rule 33-204.003 lays out the state,s policies on food service operations. These rules state that, &(i)nmates shall receive three meals per day, of which at least two shall be hot meals. The meals shall be provided at regular meal times during each 24-hour period, with a period of no more than 14 hours between the end of the evening meal and the beginning of the morning meal, weather and security permitting⁸ (33-204.003(1) F.A.C.). The rules further dictate that, &(f)ood shall not be withheld, nor the standard menu varied, as a disciplinary sanction or as a reward for good behavior or work for an individual inmate⁸

(33-204.003(2)(d)). Had food been withheld, as alleged, Mr. Niebla or another alleged victim would have had grounds to bring a grievance for a violation of the rules pursuant to Florida Administrative Code Rules 33-103, which provides for grievance procedure for all inmates regarding the substance, interpretation, and application of rules and procedures of the department that affect them personally⁸ (33-103.001(3)(b)).

Petitioner fails to present any evidence or even argument that he attempted to exhaust the domestic remedies afforded him, a requirement for admissibility (Res. 5/1 at para. 87 (g)). For example, Petitioner makes no mention of the administrative options available to him under Florida Administrative Code Rules 33-103.005 and 33-103.006 which lay out the processes for both informal and formal grievances for criminal offenders to pursue complaints against corrections officials. Inmates may file an informal grievance (33-103.005(1)(a)) which will be addressed by the staff. Should that grievance not provide a satisfactory remedy to the inmate, the inmate may file an formal grievance (33-103.006(2)(h)) to the Bureau of Inmate Grievance Appeals, which will review and assess the complaint. Should neither the informal nor formal grievance process provide the inmate with a satisfactory outcome, the inmate may appeal an adverse decision to the Office of the Secretary of the Florida Department of Corrections (33.103.007(2)). If the inmate is still dissatisfied with the result, or if the Department of Corrections at any point fails to adhere to its policies and deadlines regarding responding to the complaint, the inmate may seek judicial review.

However, in his communication, Petitioner states only that he addressed the problem to Director Whitehurst however it seems as if he has denied equal protection of the laws.⁸ He makes no mention of any attempt to avail himself of the informal or formal grievance process available to him in Florida. Nor has the Petitioner listed any attempts to avail himself of the judicial remedies afforded him in both state and federal court.

Accordingly, the Petitioner's claim should be found inadmissible for failure to exhaust domestic remedies.

II. Conclusion

In conclusion, the Working Group should find the communication in G/SO 215/1 USA 76 to be inadmissible. First, the communication demonstrably fails to meet the requirements in the HRC Complaint Procedure to provide factual descriptions of alleged violations or any credible evidence. Second, Petitioner has failed to even argue that he has pursued all domestic remedies or that such remedies would be ineffective or unreasonably prolonged. Rather, the communication is a list of generalized grievances and allegations that are not reliably attested⁸ or otherwise substantiated. For each of these reasons, we respectfully submit that this communication be found inadmissible by the Working Group.

14. End text. Appreciate Mission's assistance.
CLINTON